IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.42 OF 2005

IN

NOTICE OF MOTION NO.2202 OF 2004

IN

TESTAMENTARY SUIT NO. 17 OF 1984

IN

TEST. PETITION NO.12 OF 1983

Manish K. Patel and Anr. .. Petitioners

Versus

Bhavesh N. Amin and Anr. .. Respondents

Mr. Viraj Tulzapurkar a/w Saumya Srikrishna i/b P.C. Mankad for the Petitioner.

Mr. Nitin Thakkar a/w Gaurav Joshi and Avinash Joshi i/b Mulla & Mulla for the Respondents.

CORAM : S.K. SHAH, J.

DATED : JUNE 17, 2005.

P.C.-

1. Heard the learned Counsels on both the sides at length.

2. This Petition is filed praying for declaration that the Respondents have committed breach of the order dated 5th August, 2004 as extended from time to time by subsequent orders. By that order the matter was adjourned by one week and

it was further directed that-

> *" ... in the meanwhile, the parties shall maintain the status-quo with regard to the work of demolition, construction etc. and no third party rights shall be created in respect of the concerned property."*

It is alleged that the Respondents have committed breach of this order and started construction on the suit property and, therefore, the present Petition is filed.

3. The brief submission advanced on behalf of the Petitioner is that this order of maintenance of *status - quo* was continued from time to time and lastly by order dated 2.12.2004 the following order was passed -

> *"1....., 2....., 3.....*
> *4. Learned Counsel for the defendant Nos. 2[a], 2[b], and 2[c] seeking time for filing reply.*
> *5. Time granted till 13.1.2005.*
> *6. In the meantime earlier order to continue."*

4. The contention advanced on behalf of the Petitioner is that *"in the meantime"* means till the Notice of Motion is decided. Whereas the contention advance on behalf of the Respondents is that this order of continuation of the earlier order was only till 13.1.2005 when the reply was directed to be filed.

5. This being a matter at the ad-interim stage, considering the facts of this case and orders passed on 5.8.2004,

12.8.2004, 19.8.2004, 26.8.2004, 2.9.2004, 9.9.2004, 23.9.2004,

14.10.2004 21.10.2004, 28.10.200, 25.11.2004, 25.11.2004, 2.12.2004, this Contempt Petition is not entertainable as on all these dates at the request of the Petitioner the interim relief was continued and that was to a limited period. The last order which was passed on 2.12.2004 granting time till 13.1.2005 for filing reply also mentions that *"in the mean time the interim relief to continue".* That means it was continued only till 13.1.2005 when the parties were directed to file reply.

6. As such, the Contempt Petition stands dismissed.

7. Permission to file affidavit duly sworn in before the Officer of the Court granted for replacing the affidavit sworn before notary.

[S.K.SHAH, J.]